

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JARID L. CUBBAGE,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-798-GMS
	:	
THOMAS CARROLL, Warden,	:	
CARL C. DANBERG,	:	
Attorney General of the State of Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, the respondents move for an extension of time in which to file an answer to the petition. In support thereof, the respondents state the following:

1. The petitioner, Jarid L. Cubbage, has applied for federal habeas relief challenging a conviction following a jury trial in the Delaware Superior Court of first degree robbery and related charges. (D.I. 2). Cubbage was sentenced to eight years in prison followed by decreasing levels of probation. The conviction and sentence were affirmed on direct appeal. *Cubbage v. State*, No. 5, 2003, 2003 WL 21488129 (Del. June 25, 2003). The Superior Court denied Cubbage's ensuing motion for post-conviction relief, and that decision was affirmed on appeal. *Cubbage v. State*, No. 168, 2005, 2005 WL 2319114 (Del. Sept. 20, 2005). The answer is presently due on April 28, 2006.

2. This is counsel's third request for additional time to file the answer, and counsel regrets the repeated requests for additional time. The Appeals Division is short staff and, since receiving the second extension from the Court, counsel has filed answers in two other cases, argued a case *en banc* in the state supreme court, and filed an answering brief on April 21, 2006

in a first degree murder case pending on direct appeal in the state supreme court. Counsel has started preparation of the answer but has been unable to complete it due to case load and other matters. Of note, there are additional time demands because undersigned counsel has resigned his position in the Appeals Division to work in a different division at the Department of Justice. Counsel also has a long-planned pre-paid family vacation scheduled for the first week of May. Counsel will complete the answer with all dispatch upon return and will file it upon completion. Counsel thus requests two weeks upon return, or until May 19, 2006, to complete the answer in this case.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is the respondents' third request for an extension of time in this case. The requested extension will not result in any prejudice to the petitioner.

5. In light of the above, the respondents submit that a four-week extension of time to and including May 19, 2006 is reasonable.

/s/

Thomas E. Brown (ID# 3278)
Deputy Attorney General
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Date: April 27, 2006

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Petitioner,	:	
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THOMAS CARROLL, Warden,	:	
CARL C. DANBERG,	:	
Attorney General of the State of Delaware,	:	
	:	
Respondents.	:	

ORDER

This _____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer to the petition for a writ of habeas corpus, and

WHEREAS, it appearing to the Court that the request is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before May 19, 2006.

United States District Judge

CERTIFICATE

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: April 27, 2006

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of this Court, hereby certifies that on April 27, 2006 he caused to be electronically filed a Motion for Extension of Time with the Clerk of the Court using CM/ECF. I hereby certify that I have also caused to be mailed by first class U.S. Mail two copies of the document to the following non-registered participant, the petitioner:

Jarid L. Cubbage (No. 00271683)
Delaware Correctional Center
1181 Paddock Road
Smyrna, De 19977.

/s/
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: April 27, 2006